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William Knox on American Taxation (1769)

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Old South Leaflets.

No. 210.

William Knox ON American Taxation, 1769

Edited by S. E. Morison.

INTRODUCTION.

Americans are not accustomed to pay much attention to the English side of the taxation argument that preceded the American Revolution. The leaders of that great movement succeeded in convincing a fighting minority of their countrymen, and many English Whigs as well, that the taxation measures of Grenville and Townshend were illegal and unconstitutional, making resistance a duty as well as a right. Yet their arguments are singularly vulnerable. Down to the eve of war, the colonial leaders acknowledged the jurisdiction of Parliament. They could hardly have done otherwise, since Parliament had frequently legislated for the Colonies in the past, regulated their trade, and levied customs duties. But if Parliament is acknowledged the supreme legislature of the British Empire, it is difficult to escape the logic that it has the power to tax all British subjects. It would be as illogical to deny the power of Congress to levy income taxes or customs duties in Alaska or the Philippines, because these territories have no voting representatives at Washington.

This pamphlet of William Knox has been selected to represent the English side of the controversy, because it is calm in temper, accurate in facts, and, in substantial agreement with the fundamental theories of the Whigs. It owes much of its force to its recognition of the Whig principles of natural rights and the social compact, as expounded by John Locke. It appeared

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in 1769, during the second stage of the taxation controversy, after Parliament had substituted the Townshend duties on tea, paper, etc., for the Stamp Act. John Dickinson's "Letters of a Farmer in Pennsylvania," the most influential American pamphlet of this period, is frequently referred to by Knox. We have no means of knowing how much influence the "Controversy Reviewed" exerted in America; but it is significant that not long after its appearance the more advanced colonial writers ceased to split hairs on the taxation question, and adopted the logical, though historically incorrect, ground that neither King nor Parliament ever had had any right to legislate for the Colonies.

After the fashion of the time, Knox's "Controversy Reviewed" appeared anonymously, and was extremely voluminous, covering 207 octavo pages. The present Leaflet is a selection of the more forceful and striking passages. The numerals in brackets are the original page numbers.

THE CONTROVERSY BETWEEN Great Britain and her Colonies REVIEWED;

THE SEVERAL PLEAS OF THE COLONIES,

In Support of their Right to all the Liberties and Privileges of British Subjects, and to Exemption from the Legislative Authority of Parliament,

STATED AND CONSIDERED:

AND

The Nature of their Connection with, and Dependence on, GREAT BRITAIN,

SHEWN,

UPON THE EVIDENCE OF

HISTORICAL FACTS

AND

AUTHENTIC RECORDS.

LONDON:
Printed for J. ALNON, oppofite Burlington-Hovfe in Piccadilly. MDCCLXIX.

[1] He that goeth about to persuade a multitude, that they are not so well governed as they ought to be (says the learned and judicious Hooker) shall never want attentive and favorable hearers; because such as openly reprove supposed disorders of state, are taken for principal friends to the common benefit of all and for men that carry singular freedom of mind. Under this fair and plausible colour, whatsoever they utter passeth for good and current.

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[5] Far be it from me to wish to be thought insensible to the good or ill opinion of my countrymen; but as I consider it to be my duty to promote their welfare to the utmost of my poor ability, I will *shew them my opinion*, whether they may reward or censure me for my endeavours. On this principle, and actuated by these motives, it is, that, unawed by the terrors which rise before me, I adventure upon my present undertaking; and I set down to review the American controversy, with the single, and I hope honest, purpose of bringing back my fellow subjects in the Colonies to a just sense of their duty to the supreme legislative power, by exposing to them the fallacies by which they have been deluded, and exploring the dangers which the paths wherein they are now bewildered must unavoidably lead them into.

The several pleas which have been urged by those who have distinguished themselves in this controversy, on behalf of the Colonies, may be comprehended under these two general heads:

[6] The title of the inhabitants in the Colonies to all the rights, liberties, and privileges of Englishmen; and their claim to exemption from the jurisdiction of parliament.

It should seem to be of the utmost importance to the Colonies, that the former plea was established before they adduced any proofs in support of the latter; for, should they fail in the one, nothing could be more fatal to their freedom, and consequently to their prosperity, than their succeeding in the other.

If they should unhappily be able to demonstrate that the Colonies are no part of the British state; that they are the king's domain, and not annexed to the realm; that the inhabitants are not British subjects, nor within the jurisdiction of parliament; they can have no title to such privileges and

immunities as the people of England derive under acts of parliament, nor to any other of those rights which are peculiar to British subjects within the realm. . . .

[7] Whatever grievances they may have to complain of, they must seek redress from the grace of the crown alone; for, should they petition parliament to do them right, they themselves have authorized the crown to tell parliament, as the secretary of state to James the First did the house of commons, [8] "America is not annexed to the realm, nor within the jurisdiction of parliament, you have therefore no right to interfere."

Such being the case, we are therefore to expect to find the strongest efforts of the colony advocates directed to this point. We may indeed look for the clearest evidence, the most convincing arguments, and even demonstrative proofs of their right to these privileges, independent of acts of parliament, since we see them so eager to preclude parliament from the power of conveying to them any privilege whatever. Let us then see on what they found their title.

In May 1765, the house of burgesses in Virginia resolved, "That the first adventurers and settlers of this his majesty's colony and dominion of Virginia, [9] brought with them and transmitted to their posterity, and all other his majesty's subjects since inhabiting in this his majesty's said colony, all the liberties, privileges, franchises, and immunities, that have at any time been held and enjoyed, and possessed by the people of Great-Britain."

This resolution is adopted by the assembly of Maryland, and repeated in the very same words: and as the assembly of Virginia has been said to have hung out the standard for American liberty, and the other Colonies have little more merit than that of following their leader, I must confess I expected to have found a much clearer proof of the truth of the proposition contained in their resolution than I am able to collect from the terms in which it is expressed. They tell us indeed "That the first adventurers in the reign of James the First, brought with them, and transmitted to their posterity, &c. all the liberties, privileges, franchises, and immunities, that the people of Great-Britain have at any time (since as well as before) enjoyed and possessed." [10] But in what sort of *menstruum*, *nucleous*, or *embryo*, it was that they carried with them to Virginia, in the reign of James the First, the *habeas corpus* act, which the people of England did not enjoy or possess till the reign of

Charles the Second; or the bill of rights which they did not enjoy till the reign of William and Mary; the acts for altering the succession and the limitation of the crown, and many others passed in that and the subsequent reigns; as they have not condescended to inform their friends in England, so they can only expect us to admire their profound logical skill, and must content themselves with the more *rational applause* of their countrymen, who they may have more fully instructed.

The assembly of Pennsylvania, by their resolutions in the same year, declare, "That the inhabitants of this province are intitled to all the liberties, rights, and privileges of his majesty's subjects in Great-Britain, or elsewhere; and that the constitution of government in this province is founded on the natural rights of mankind, and the noble principles of English liberty, and therefore is or ought to be perfectly free."

[11] This resolution asserts in like manner, as do the resolutions of Virginia and Maryland, that the people of that colony *are intitled* to all the rights of British subjects; but it does not pretend that the *first settlers* carried them there: neither does it found their claim to them upon the royal charter to the proprietor, or upon the laws of Great Britain, but upon the "natural rights of mankind, and the noble principles of English liberty."

That the *natural rights of mankind* should give any people a right to all the liberties and privileges of Englishmen, is, I believe, a doctrine unknown to all civilians, except the assembly of Pennsylvania. It is indeed a most benevolent doctrine; for if it be established, it will render the blessings which British subjects enjoy under their excellent constitution universal to all people, at least to all those who live under any constitution of government which is founded upon the natural rights of mankind, [12] in whatever part of the world they may inhabit, or whoever may be their sovereign. The native Indians in North America, the Hottentots at the Cape of Good Hope, the Tartars, Arabs, Cafres, and Groenlanders, will all have an equal title to the liberties and rights of Englishmen, with the people of Pennsylvania; for all their constitutions of government are founded on the *natural rights* of mankind.

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[21] — But it seems parliament has a right to *benefit* the colonies, but not to *bind* them: it may *give* them *bounties*, but

it must not *impose burdens*. Its power over the colonies is somewhat like that allowed by the deists to the Almighty over his creatures, he may reward them with eternal happiness if he pleases, but he must not punish them on any account. . . .

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[25] I come now to what Mr. Dickenson calls the American declaration of rights, which are the resolutions of the committees from the several Colony assemblies, which met at New York, 19 October, 1765.* and here we may expect to find the separate and irregular claims of each Colony consolidated and reduced into system and consistency. Their resolutions are as follow:

[26] "That his majesty's subjects in these Colonies owe the same allegiance to the crown of Great Britain that is owing from his subjects born within the realm, and all due subordination to that august body, the parliament of Great Britain.

"That his majesty's liege subjects in these Colonies are intitled to all the inherent rights and liberties of his natural-born subjects within the kingdom of Great Britain."

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[27] What Englishman could desire more of the Colonies than *due obedience* to that august body, the parliament of Great Britain? But what is *due obedience* is a matter in which they and the people of England differ exceedingly; [28] and the committees chose to reserve to the colonies *their own construction* of the terms, while they hoped the people of England would be led to believe they agreed with them in theirs.

An Englishman conceives due obedience to parliament to mean lawful obedience, or obedience to an act of parliament. The Colonies conceive the parliament to have no right to make laws for them; and due obedience to parliament is therefore, in their apprehension, no obedience at all. . . .

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[31] Having thus seen upon what sort of foundations the different colony assemblies build their several titles to the rights and privileges of Englishmen, and that each superstructure, at the approach of reason, vanishes like—the base-

* The Stamp Act Congress.

less fabric of a vision.—I will not fatigue the reader with a discussion of the arguments introduced by the colony advocates in support of the assemblies resolutions. Whatever they can urge in behalf of the Colonies claim to the rights and privileges of Englishmen, whilst they deny that they are subjects of the realm, or natural-born British subjects, and that the Colonies are within the realm, must be obnoxious to the same charges of inconsistency and absurdity to which the assemblies resolutions are so palpably liable; and the simplest of my countrymen can easily detect the most artful American sophister, [32] by insisting upon his answering this plain question: Are the people in the Colonies British subjects, or are they aliens or foreigners?

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[33] . . . That they cannot however maintain their title to those rights upon any other ground, than that of their being British subjects, born and inhabiting within the realm, is, I think, sufficiently evident; and therefore, that they may fail in proving that they are not British subjects, and that the Colonies lie without the realm, is the most friendly wish I can give them. How far they have succeeded in the fatal attempt, must be the subject of our next enquiry.

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[34] When the repeal of the stamp-act was their object, a distinction was set up between internal and external taxes; they pretended not to dispute the right of parliament to impose external taxes, or port duties, upon the Colonies, whatever were the purposes of parliament in laying them on, or however productive of revenue they might be. Nay, Doctor Franklin tells the house of commons, that "they have a natural and equitable right to some toll or duty upon merchandizes carried through that part of their dominions, viz, the American seas, towards defraying the expense that they are at in ships to maintain the safety of that carriage." This, however, was only the language for 1765 and 1766, but when parliament seemed to adopt the distinction, and waiving for the present the exercise of its right to impose internal taxes, [35] imposed certain duties on merchandizes imported into the Colonies,* and carried through those seas which the parliament was

* The Townshend duties of 1767, on tea, paper, etc.

told were *theirs:* the distinction between internal and external taxes is rejected by the colony advocates, and a new one devised between taxes for the *regulation of trade*, and taxes for the *purpose of revenue.*

This new distinction, however, between taxes for the regulation of trade, and taxes for the purpose of revenue, as far as it respects the right of parliament to impose the one, but not the other, is, of all absurdities, the most ridiculous that ever was contended for. It is saying, in other words, that parliament has a right to impose a *heavy tax*, but not a *small one.* It may lay one so grievous, that no body can afford to pay it; but it has no authority to impose one which may be easily borne: nay, in the instances referred to by Mr. Dickenson in his Farmer's Letters, it should seem to mean that parliament has no right to reduce a tax which it has had a legal right to impose in a manner *extremely burdensome.* [36] The right of Parliament to charge foreign molasses with a duty of six-pence a gallon was unquestionable; but, for parliament to *reduce* the six-pence to three-pence, is a violent usurpation of unconstitutional authority, and an infringement of the rights and privileges of the people in the Colonies. . . .

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[37] It is the *purpose* of parliament in laying the tax, which, it seems, gives it the right of laying it. Curious reasoning this! —Now, should it happen, that parliament was at any time mistaken in its purpose, [38] and that a tax which it imposed with an intention that no body should pay it, that is, that it should operate as a prohibition, should really turn out to be such a tax as the commodity on which it was charged could bear, and the people in the Colonies were willing to purchase it at the price the tax had raised it to, what should we do then? If the tax be paid it then becomes a revenue tax, and no longer a prohibitory one; and is thenceforward a grievance, and an infringement of the rights of the colonies. On the other hand, suppose parliament should be mistaken in a tax it laid for the purpose of revenue, and it turned out a prohibition, would the tax then become a constitutional one?

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[41] A land-tax is a judicious regulation, inasmuch as it excites the land owner to cultivate and improve his lands;

and with this very view, taxes are laid upon unimproved lands in America, by the colony assemblies. Thus our East-India duties are many of them calculated to promote our own manufactures, as well as to raise a revenue. Thus the duties upon French goods were imposed with a view to check the trade of France, [42] to encourage our own manufactures, and, at the same time, to raise a fund for defraying the public expences. So likewise are a multitude of our taxes upon articles of luxury and of extravagance in our home consumption; so likewise are the taxes upon many of our exports, to prevent the manufacture of our raw materials abroad, and to encourage it at home. . . .

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[43] This boasted distinction between taxes for the regulation of trade, and taxes for the purpose of revenue, we therefore see is without a difference, and will in no sort serve to protect the Colonies from parliamentary internal and external taxation, however it may serve for a pretence, under which to strip parliament of all jurisdiction over the Colonies.

[44] I have indeed thought of a distinction which would suit the Colonies purposes much better, and which, I believe, is what they mean, by the difference between taxes for the purpose of revenue, and taxes as regulations of trade, if they chose to speak it out, which is that between the imposing taxes and collecting them. They would acknowledge, with all their hearts, a right in parliament to do the one, provided it never attempted to do the other. It is this *new invention* of *collecting taxes* that makes them burdensome to the Colonies, and an infringement of their rights and privileges;—and herein it is that Mr. Grenville's administration has proved the aera of the Colonies' loss of liberty.

The duty of six pence a gallon upon foreign molasses, which had been laid thirty years before Mr. Grenville was first commissioner of the treasury, was no grievance, *because it had never been collected;* but when that gentleman reduced the duty to three pence, all liberty was at an end—for he took measures for the Colonies to pay the three pence.

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[50] For if the authority of the legislative be not in one instance equally supreme over the Colonies as it is over the people of England, then are not the Colonies of the same com-

munity with the people of England. All distinctions destroy this union; and if it can be shewn in any particular to be dissolved, it must be so in all instances whatever. There is no alternative: either the Colonies are a part of the community of Great Britain, [51] or they are in a state of nature with respect to her, and in no case can be subject to the jurisdiction of that legislative power which represents her community, which is the British parliament.

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[55] It would be endless to trace this doctrine of taxes through all its consequences. I have already gone far enough to shew, that upon Mr. Dickenson's principles, where they cannot be imposed, there can be neither restraints upon trade, nor exercise of sovereign authority; [56] and that if Great Britain does not possess the right of taxing the Colonies, she has no right to exercise any jurisdiction over them; but that the Colonies are, as Mr. Dickenson says they are, of themselves, "a distinct community, or one political body of which each colony is a member, separated from the rest of the world," and especially from Great Britain. Yet notwithstanding, these are clearly the consequences which must follow from his premise; and that such are the consequences the Colonies mean should follow from them; yet Mr. Dickenson, not caring to discover the whole of their purpose so fully at present, in the beginning of his second letter, thus expresses himself: "The parliament unquestionably possesses a *legal authority* to *regulate the trade of* Great Britain *and all her Colonies:* such an authority is essential to the relation between a mother country and her Colonies, and necessary for the common good of all. He who considers these provinces, as *states distinct from the British empire*, has very slender notions of justice, or of their interests: *we are but parts of a whole*, [57] and therefore *there must exist a power somewhere to preside and preserve the connection in due order; this power is lodged in parliament.*" . . .

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[59] Perhaps all these seeming absurdities, and contradictions would be reconciled or obviated, if we rightly understood the account he gives us in the first page of his first letter, of the connection between Great Britain and her Colonies; and it is a pity his learned editor has not given the public a disser-

tation upon that most ingenious and instructive passage. "We are," that is, the Colonies are, says he "as *much dependent* on Great Britain, as a *perfectly free* people can be on another."

But the main objection, and on which all the other objections made by the Colonies against the right of parliament to impose taxes upon them, is founded, remains to be examined. [60] "They tell us, that it is the true principle of government, that no man should pay a tax to which he does not consent, either in his own person, or by his representative chosen by him; that the Colonies are not represented in the British parliament, and therefore cannot be taxed by it."

This doctrine, that taxation and representation upon the true principles of government must go together, is so well calculated to captivate the multitude in this country, and so flattering to the Americans, as it intirely abrogates the authority of parliament to tax the Colonies; that it is not surprizing it has found partizans in Great Britain, and has been universally adopted in America, without much enquiry or examination into its foundation, in reason or fact. And yet, if it be applied, as in the instance before us, to an actual or a *distinct* representation of *all those who are taxed*, and no other will serve the purpose of the Colonies, it is not true of any government now existing, nor, I believe, of any which ever did exist. In this sense it neither is nor ever was true in Great Britain! [61] It is not true in any of the charter or royal governments in America: it is not true in the province of Massachusetts Bay, in which by the last history of it, there appears not only to be a multitude of individuals, but even forty townships of freeholders now taxed, who have no distinct representatives: so far therefore is this doctrine of distinct representation and taxation from going together, "being joined by God himself; founded in the eternal law of nature; having grown up with the constitution of England;" that it never existed, either in England, or any other country in the world.

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[64] . . . All the corporations and boroughs who elect members for parliament, do it by virtue of a charter for that purpose from the crown, or by prescription, which, in law, presupposes a grant or charter beyond time of memory. The kings of England for many centuries constantly exercised the right of creating corporations, with the power of chusing

members to parliament, and vested that power in many or in a few at their discretion; some of these, particularly the two universities, were incorporated for that purpose so late as the reign of James the First; and, unless it is restrained by the act of the union of the two kingdoms, I do not know that this power has ever been taken away.

[65] This right in corporations of electing representatives to parliament, is therefore clearly derived from the grant of the crown; and the members of the corporation exercise that right, because the corporation *holds of the crown*. . . .

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[66] It is, moreover, worthy of remark, that these members sent to parliament by the freeholders and corporations, are not called the *representatives of the people*, but the *commons in parliament*. They are so styled in all the old writs and records; they are so styled to this day in every act of parliament; and they act not only for their own particular communities, by whom they are severally elected, but each of them for the community of the whole.

[67] The subjects of Great Britain are not, however, without their representatives, though the members who compose the House of Commons cannot be said to be distinctly so. Neither are they bound by laws, nor is their money taken from them without their own consent given by their representatives. *The King, Lords, and Commons are their representatives;* for to them it is that they have *delegated* their individual rights over their lives, liberties, and property; and so long as they approve of that form of government, and continue under it, so long do they consent to whatever is done by those they have instructed with their rights.

"Laws they are not (says Hooker) which public approbation hath not made so. But approbation not only they give, who personally declare their assent by voice, sign, or act, but also when others do it in their names, by right originally at the least derived from them. And to be commanded *we do consent*, when that *society whereof we are part* hath at any time *before consented*, without revoking the same after by the like universal agreement." [68] And Mr. Locke, who followed this learned investigator of the rights of mankind, in his answer to Sir Robert Filmer,* after having shewn that

* Locke's Second Treatise of Government (Old South Leaflet, No. 208).

the origin of all power is from the people only; that every form of government, whether a democracy, an oligarchy, an elective or heriditary monarchy, is nothing more than a trust delegated by the society to the person or persons so appointed, lays it down as a fundamental maxim in all governments: "That the legislative is the joint power of every member of the society, given up to that person or assembly which is legislator; and that even the executive, when vested in a single person, is to be considered as the representative of the common-wealth." And he then adds; "Nobody doubts but an *express consent* of any man entering into society, makes him a perfect member of that society, a subject of that government. The difficulty is what ought to be looked upon as a *tacit consent;* and to this I say, [69] that *every man that hath any possessions or enjoyment of any part of the dominions of any government, doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government during such enjoyment, as any one under it.*"

Upon this principle, the king and the two houses of parliament, are by our constitution *representatives* of the legislative, as the king alone is of the executive power of the common-wealth; and, upon this principle, every subject of Great Britain, when he is taxed by parliament, is taxed by his own consent, for he is then taxed by consent of those whom the society has impowered to act for the whole; and every member of the community must therefore subscribe his tacit consent to all such taxes as may be imposed, or other legislative acts that may be done by those whom the society has appointed, as long as the form of government subsists. This is the British constitution; and if the British subjects in America still continue to be part of our community it follows that they also are represented by the British legislative, and equally bound by its laws.

[70] That the first inhabitants of the Colonies were part of the British community, and bound to obey its legislative power in all respects, as any other subjects at the time of the establishment of those Colonies, will not be denied. How then has that obedience been altered or released? Those Colonies were all created by charters or temporary authorities, from the executive power of this community, except in the cases of Jamaica, New York, and the late acquisitions of Quebec, the Ceded Islands, and the Two Floridas, which

were conquests made by this community upon foreign powers, and such of their subjects as remained were incorporated with us under our laws and obedience. . . .

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[71] But suppose it had been otherwise; can it be contended, that the executive power of the crown, can, by any grant or authority, alter or annul the legislative power in the article of taxation, or any other? Will those who contend that this right of taxation belongs only to, and can only be exercised by the deputies of the people, contend at the same time for a right in the crown or executive to annul or restrain the legislative power, partly composed as it is of these deputies, in that very article of taxation? If they do, let them hear Mr. Locke in reply. He will tell them, that "even the legislative power itself cannot transfer the power of making laws to any other hands; for it being but a delegated power from the people, they who have it cannot pass it over to others." [72] He says, moreover, that "all obedience, which, by the most solemn ties any one can be obliged to pay, ultimately terminates in this supreme power, the legislative, and is directed by those laws which it enacts; nor can any oaths to any foreign power whatsoever or *any domestic subordinate power*, discharge any member of the society from his obedience to the legislative, acting pursuant to their trust; nor oblige him to any obedience contrary to the laws so enacted, or farther than they do allow; it being ridiculous to imagine, one can be tied *ultimately* to obey any power in the society which is not supreme." He says in another place; "there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate."

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[73] . . . The kings of England never had personally, nor ever claimed to have any property in the lands in the Colonies. [74] Those of them who carried their claims of prerogative the highest, never pretended to have any other title to those lands than what they derived from their possession of the crown of England, and they granted them under *that title* to their present possessors, or their ancestors; for all grants of lands in the Colonies have been made under the great seal of England, or by authority derived under the great seal of

England, which is the same thing, from the first discovery of America to this day.

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[76] The lands in all the Colonies having therefore been clearly shewn to be part of the dominions of Great Britain, and the possessors of them to hold them under authorities and titles derived from the British state, Mr. Locke would require no other proof of the right of the legislative power of Great Britain to the obedience of the possessors of those lands; for, speaking of the manner by which a man tacitly makes himself a subject of any country or government, he says:

"It is commonly supposed, that a father could oblige his posterity to that government of which he himself was a subject, and that his compact held them; whereas it being only a necessary condition annexed to the land, [77] and the inheritance of an estate which is under that government, reaches only those who will take it on that condition, and so is no natural tie or engagement, but a voluntary submission; for every man's children, being by nature as free as himself, or any of his ancestors ever were, may, whilst they are in that freedom, choose what society they will join themselves to, what commonwealth they will put themselves under; but if they will enjoy the inheritance of their ancestors, they must take it on the same terms their ancestors had it, and submit to all the conditions annexed to such a possession." "Whoever (says he in another place) by inheritance, purchase, permission, or otherways, enjoys any part of the land so annexed to, and under the government of, that commonwealth, must take it with the condition it is under; that is, of submitting to the government of the commonwealth under whose jurisdiction it is, as far forth as any subject of it."

[78] I have quoted these passages from Mr. Locke's Treatise upon Civil Government, because his opinions in this treatise have been principally relied on as the foundation of many extravagant and absurd propositions which he never meant to encourage; and because I have the highest regard in general for the good sense and free spirit of that excellent work, written to defend the natural rights of men, and particularly the principles of our constitution, when they were attacked both by force and fraud:

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[84] But what puts Mr. Locke's meaning in these pages out of all question, is what he says in his eighth chapter of the beginning of civil societies: "That every man, when he at first incorporates himself into any commonwealth, he, by his uniting himself thereunto, annexes also and submits to the community, those possessions which he has or shall acquire, [85] that do not already belong to any other government: for it would be a direct contradiction for any one to enter into society with others, for the securing and regulating of property, and yet to suppose his land, whose property is to be regulated by the laws of the society, should be exempt from the jurisdiction of that government to which he himself, the proprieter of the land is a subject. By the same act therefore, whereby any one unites his person, which was before free to any commonwealth, by the same he unites his possessions, which were before free to it also; and they become, both of them, person and possession, subject to the government and dominion of that commonwealth as long as it hath a being."

Can any words more strongly express the right of the supreme legislature to tax or dispose of the property of the subject for *public purposes*, than do these last quoted? And those who would draw from any other more loose or general expressions of Mr. Locke, any argument to exempt the property of any subject from taxes imposed by the supreme legislative for the *public service*, [86] must impute to him such inconsistencies as Mr. Locke was incapable of, and charge him with contradictions which ought to destroy his credit, both as an honest man and a clear reasoner.

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I might indeed have brought it to a much speedier conclusion, and have exposed the absurdity and impracticability of the doctrine, from the very principles upon which its promulgers would establish it. They say; "That no man ought to be taxed, but by his *own consent;*" or, in other words, "that the consent of those who *pay the taxes* is necessary to their being constitutionally imposed. [87] That this consent must be given by the people themselves who pay the taxes, or by their distinct representatives chosen by them." And these, they say, are the rights of Englishmen. Now if these be the rights of Englishmen, I will undertake to say, there is scarce a session of parliament passes in which they are not most

notoriously violated, and if parliament did not do so, it could lay no taxes whatever.

When the tax was laid upon hops, did the people who were to pay the tax, viz. the hop-growers, consent to it, either by themselves or their distinct representatives? Did the people in the cyder counties, or their distinct representatives, consent to the tax upon cyder? Is the land-tax kept up at three shillings with the consent of all the land-owners in the kingdom, or that of all the knights of shires, their distinct representatives? What tax is it indeed to which those who pay it, or their distinct representatives, have all consented?—[88] But if this actual and distinct consent of the taxed, or of their distinct representatives, be constitutionally necessary to their being taxed; by consequence, whenever such consent is *not given*, no tax can be constitutionally imposed. . . .

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[91] Thus, whilst they exclaim against parliament for taxing them when they are not represented, they candidly declare they will not have representatives, lest they should be taxed—like froward children, they cry for that which they are determined to refuse, if it should be offered them.* The truth however is, that they are determined to get rid of the jurisdiction of parliament *in all cases whatsoever*, if they can; and they therefore refuse to send members to that assembly, lest they should preclude themselves of this plea against all its legislative acts—that they are done without their consent; which, it must be confessed, holds equally good against *all laws*, as against taxes. [92] For it is undoubtedly a principle of the British constitution, "that no man shall be bound by any law to which he does not give his consent," of equal efficacy with that of his not being taxed, but by his own consent. In what manner however *that consent* is given, we have already seen; and the futility and falacy of the pretence, that it cannot be given but by *distinct* representatives, elected by those who pay taxes, or are bound by laws, have been sufficiently exposed.

The colony advocates however, not caring to develope their whole purpose *at present*, tell us, that by refusing to accept our offer of representatives, they only mean to avoid giving parlia-

* The colonial delegates to the Stamp Act Congress of 1765 declared against sending colonial representatives to Parliament. Compare Samuel Adams's Rights of the Colonists, in Old South Leaflet No. 173, p. 6.

ment a pretence for taxing them, which they say it is not necessary for parliament to do, as they have assemblies of their own in each Colony, who are the representatives of the people; and who, being acquainted with their circumstances, can best judge what taxes they can bear, and what sums they ought to contribute to the public occasions, whenever his majesty shall call upon them for their aid.

[93] The colony assemblies are indeed but seven-and-twenty, and perhaps it might happen, that they should all agree in opinion upon some one point; but I much fear that point would not be—*to lay taxes upon themselves*. There is much more reason to apprehend it might be as we have seen—*not to do so*. Mankind are in general apt enough to agree to *keep* their money, but not so frequently of one mind when the proposition is to *part* with it. But to take the matter on its fairest side, let us suppose these twenty-seven states all equally disposed to shew regard to his majesty's requisition—provided they think the occasion fitting. Upon what occasion then shall his majesty call upon them? Not to settle a permanent revenue for support of their own civil establishments; for he has already made requisitions to many of them, without end, for that purpose, and always without effect; and those few who have complied most heartily regret it. Shall it be for support of the military establishment kept up in time of peace? The continental Colonies tell us "they don't want our troops; and if we keep any among them we must pay them." [94] Shall it be for a fund to give presents to the Indians? The islands say, "they have nothing to do with the Indians. Those who have the benefit of their trade, and live upon their lands, ought to give them presents." Shall it be for discharge of the public debt? One and all will tell us, "that is the affair of Great Britain alone." Suppose then a war breaks out; the Indians attack the back settlers in Virginia—what will Carolina contribute for defence of that province? "Just as much as she has ever done." What will the Islands give? Exactly the same. Suppose the Barbary states quarrel with us; the fishing colonies, and the rice and sugar colonies, suffer by their depredations on the ships bound to Portugal and the Streights —what would Pennsylvania, Maryland, and Virginia, do in the matter? A war in Germany becomes the occasion of the requisition; rice, sugar, and tobacco all go thither, but no fish—why then should New England, Nova Scotia, or Quebec,

give any thing? [95] If it was for support of the Italian states, these colonies might indeed contribute something, as they buy their fish; but if that were the occasion would Pennsylvania, Virginia, or Carolina do so?

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[106] The late war, though commenced in America, and occasioned by a dispute about American territories, was not, say the colony advocates, a colony quarrel; nor are the acquisitions made by the crown in the course of it, and retained by the treaty of Paris, of any advantage to the inhabitants of the old provinces; on the contrary, the value of their possessions has been much lessened by the addition of such extensive territories. But not to injure their cause by abridging their arguments, I will set them down in their own words, and at full length as I find them in Dr. Franklin's Examination, and in the Farmer's Letters.

[107] Dr. Franklin thus delivers himself before the House of Commons in 1765: "I know the last war is commonly spoke of here, as entered into *for the defence*, or for the sake of the people of America. I think it quite misunderstood. It began about the limits between Canada and Nova Scotia, about territories to which the crown indeed laid claim, but were not claimed by any British colony: none of the lands had been granted to any colonist; *we had* therefore *no particular* concern or interest in that dispute. As to the Ohio, the contest there begun about your right of trading in the Indian country, a right *you* had by the treaty of Utricht, which the French infringed; they seized the traders, and their goods, which were *your* manufactures; they took a fort which a company of *your* merchants and their factors and correspondents had erected there, to secure that trade. Braddock was sent with an army to retake that fort (which was looked on here as another encroachment on the king's territory) and to protect *your* trade. [108] It was not till after his defeat (in 1755), that the Colonies were attacked. They were before in perfect peace with both French and Indians. The troops were not therefore sent *for their defence*. The trade with the Indians, though carried on in America, is not an American interest. The people of America are chiefly farmers and planters; scarce any thing they raise or produce is an article of commerce with the Indians. The Indian trade is a British interest; it is carried on with

British manufactures for the profit of British merchants and manufacturers; therefore the war, as it commenced for defence of territories of the crown, the property of no American, and for the defence of a trade purely British, *was really a British war.*"

Having been asked, "Is it not necessary to send troops to America to defend the Americans against the Indians?" The Doctor replies, "No; by no means: it never was necessary. They defended themselves when they were but an handful, and the Indians much more numerous. [109] They continually gained ground, and have driven the Indians over the mountains without any troops sent to their assistance from this country."

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[111] The high rank Dr. Franklin so fitly holds among the philosophers of the age, the honourable testimony borne to his literary merit by the university of Oxford, and his great knowledge of the colony affairs, must give his evidence a degree of credit little short of *proofs of holy writ;* more especially when it is considered, that although an oath had not been administered, yet his testimony was called for by the great council of the nation, upon a matter of the highest importance to the state, and given with suitable solemnity. Mr. Dickenson's private character is not indeed so well known, but it is very respectable; and as the spirit he was endeavouring to infuse into his countrymen must soon have carried them to make their appeal to heaven, he cannot surely be suspected of attempting to rouse them by falsehoods to an undertaking, for the success of which they were to depend on the favour of the Almighty. How shall I then venture to controvert the assertions of either of these gentlemen? [112] The evidence of other individuals, however respectable will be thought insufficient, as none other can be supposed to have had equal means of information.—The opinion of governors or military commanders, would be deemed partial, either to themselves or this country, and the informations transmitted to ministers are always suspected to be adapted to the taste of the minister, or suited to serve some particular purpose. The evidence which I shall therefore have recourse to, is no other than that of the assemblies of the Colonies of Virginia and Massachuset's Bay; the one colony situate in the neighborhood of the Ohio, and the

other bordering upon Nova Scotia. The members of those assemblies must therefore be supposed to have had as competent knowledge of the state of affairs in their respective countries, and of the causes of the late war, as either Doctor Franklin or Mr. Dickenson.

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[129] Extract from the Address of the Assembly of Virginia to the King, 1754.

"As the endeavours of the French to establish a settlement upon *our frontiers*, is a high insult offered to your majesty, and if not timely opposed *with vigour and resolution*, must be attended with the most fatal consequences; we have (notwithstanding the great poverty of the colony, and the low condition of the public revenue, occasioned by the bad state of *our tobacco trade*, and a large debt due from the country, for raising and maintaining of soldiers upon the expedition against Canada in the year 1746) granted a supply of ten thousand pounds towards defraying and protecting your majesty's subjects against the encroachments of the French, which, though not sufficient to answer all the ends for which it is designed, is the utmost that your people under their present circumstances are able to bear. We therefore most humbly beseech your majesty, *to extend your royal beneficence* to us your *loyal subjects*, [130] that we may be enabled to effectually defeat the unjust and pernicious designs of your enemies."

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[131] Extract from the Draught of a Representation of the Commissioners met at Albany, July 9th 1754.

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[132] "That the said Colonies being in a divided, disunited state, there has never been any joint exertion of their force, or councils, [133] *to repel* or defeat the *measures of the French;* and particular Colonies are unable and unwilling to maintain the cause of the whole.

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That it seems absolutely necessary, that speedy and effectual measures be taken to secure the Colonies from the SLAVERY they are threatened with."

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[179] Whilst parliament was thus in every reign, and almost in every session, exercising its supreme legislative authority over the Colonies, the ministers and servants of the crown were not wanting on their part, in carrying the laws into due execution, or in exerting the Prince's just authority, for preserving the Colonies in their dependance on the king and parliament of Great Britain.

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[198] In the year 1764, the Colonies were made acquainted through their agents, that a revenue would be required from them, towards defraying the charge of the troops kept up among them, and to give this intimation the more efficacy, a resolution was propounded to, and adopted by the house of commons, that for the purpose of raising such a general revenue, a *stamp duty might be necessary.*

[199] The Colonies by this, saw that government was in earnest, and they could not doubt of the intimation given them from the king's ministers; that if they did not make grants in their own assemblies, parliament would do it for them. Mr. Grenville, indeed, went so far as to desire the agents to acquaint the Colonies, that if they could not agree among themselves, upon raising a revenue by their own assemblies, yet if they all or any of them disliked stamp duties, and would propose any other sort of tax which would carry the appearance of equal efficacy, he would adopt it. But he warmly recommended to them the making grants by their own assemblies, as the most expedient method for themselves on several accounts. The issue of this business is well known. The Colonies universally *refused* to raise a fund among themselves, for those who seemed inclined to do so, made no offer of any specific sum, nor made any grant in their assemblies, nor laid any tax for the purpose. [200] They did not imitate the more prudent conduct of the New York assembly, in the year 1715, and parliament therefore did in 1765, what parliament would have done in that year, if the like refusal had been made.

I shall here stop my researches into the political history of

the Colonies, and of the conduct which has been held by parliament and ministry towards them. And let me now ask the advocates for their independency, upon which period of this history it is, that they would fix, as the epocha of the Colonies emancipation from the sovereign authority of the supreme legislature of the realm, or where will they carry us for those pretended rights and privileges which exempt them from its jurisdiction? We have sought for them in the statute books, but we found them not; we have looked for them in the conduct of a long series of ministers; and in the opinions of the truly learned and great lawyers, that were of council to our kings, in the past ages, and lo, they are not there. Where then shall we hope to meet with them? [201] In extravagant *declamations* and unfounded arguments. In the weak *artifices* of party and in the studied *misrepresentations* of designing and interested men.

NOTES.

A talent for political controversy distinguished William Knox from the office-holding class to which he belonged. Born in Ireland in 1732, he received one of the places at the King's disposal in Georgia, in 1757. After his return to England in 1761 he was appointed agent of Georgia and East Florida in London, but his publication of two pamphlets in defense of the Stamp Act caused his services to be dispensed with. In 1770, possibly as a reward for "The Controversy Reviewed," he was made under secretary in the Colonial Office, which position he held throughout the American Revolution. He retired on a fat pension in 1782, and died in 1810. His other pamphlets on American affairs are: "A Letter to a Member of Parliament." (1764.) "The Claim of the Colonies to an Exemption from Internal Taxes." (1765.) "Instruction of the free Indians and Negroe Slaves in the Colonies." (1768.) "The Present State of the Nation." (1768.) "A Defense on the Quebec Act." (1774.) Other important pamphlets on the Tory side of the taxation controversy are listed in Edward Channing, *History of the United States*, III, 80.

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